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Of Attorneys for Defendant City of Portland

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

DMITRI STOYANOFF,

Case No.: 3:20-cv-01874-MO

PLAINTIFF,

NOTICE OF SETTLEMENT

v.

CITY OF PORTLAND, a municipal corporation; **JUSTIN DAMERVILLE**, an individual; and **MATTHEW BIGONI** an individual,

DEFENDANTS.

Pursuant to ORS 17.095, the City of Portland notifies the Court that this action has been settled pursuant to the terms of a Release and Hold Harmless Agreement, a copy of which is attached hereto as ***Exhibit 1***.

Dated: December 27, 2021

Respectfully submitted,

/s/Mallory R. Beebe

MALLORY R. BEEBE, OSB # 115138

Deputy City Attorney

Telephone: (503) 823-4047

Of Attorneys for Defendant City of Portland

RELEASE AND HOLD HARMLESS AGREEMENT

I

FOR THE SOLE CONSIDERATION of the sum of one hundred thousand dollars (\$100,000.00), the undersigned Dmitri Stoyanoff hereby releases and forever discharges the City of Portland, Justin Damerville, Matthew Bigoni, its agents, officers, employees, officials, and all other persons, firms, corporations or other entities liable or who might be claimed to be liable (hereafter "the City Defendants") from any and all claims for damages and/or injuries from or relating to the events alleged in Plaintiff's lawsuit, *Dmitri Stoyanoff v. City of Portland et al*, case number 3:20-cv-01874-MO.

II

IT IS UNDERSTOOD AND AGREED that the payment made to the undersigned under this agreement is not to be construed as an admission of liability. The City Defendants expressly deny liability to the undersigned, or any other person for injuries or damages arising out of the aforementioned incident.

III

IT IS FURTHER UNDERSTOOD AND AGREED that this agreement releases the City Defendants from any and all claims arising out of the incident, or arising out of any cause of action related to the incident, including claims brought against the proceeds of any action filed relating to the incident, including, but not limited to, medical liens, attorney liens, hospital liens, Social Security Administration liens, Medicare liens, workers' compensation liens, liens of the State of Oregon Department of Human Services ("DHS"), liens of the Oregon Health Plan ("OHP") and all other liens against the above-described claims or causes of action at the time of execution hereof.

IV

A. The Parties also acknowledge any Medicare and Medicaid interest payable under this Agreement shall be the sole and exclusive responsibility of Dmitri Stoyanoff. Dmitri Stoyanoff agrees that the duties stated in this paragraph are non-delegable and failure to perform such duties shall provide the City Defendants with a right to recover any monies paid due to the failure to satisfy Medicare's interests, including any additional expenses incurred and attorney fees. The Parties acknowledge and understand that the City Defendants will report any payment to a Medicare beneficiary in settlement of a claim under a liability insurance policy or self-insurance to Medicare (CMS).

B. Dmitri Stoyanoff agrees and warrants that he will satisfy any and all applicable Medicare, Medicaid, DHS, OHP, and any private insurer liens and third-party claims prior to receiving any portion of the settlement payment set forth in Section I from his attorney, James McCandlish. If Dmitri Stoyanoff fails to satisfy such liens, Dmitri Stoyanoff shall defend and indemnify the City of Portland, Justin Damerville, Matthew Bigoni, its agents, officers, employees, officials, and all other persons, firms, corporations or other entities from any and all claims arising out of such failure. More specifically, with respect to the interests of Medicare/CMS, Dmitri Stoyanoff

represents and warrants that he has received no notice from Medicare/CMS asserting rights to any conditional payments relating to past medical care and treatment for Dmitri Stoyanoff.

C. If applicable, Dmitri Stoyanoff shall provide a final payment letter to the City if Portland's Office of City Attorney indicating that the interests of Medicare/CMS have been resolved prior to receiving any portion of the settlement payment set forth in Section I of this Agreement.

D. In consideration of the payments set forth in this Agreement, Dmitri Stoyanoff waives, releases, and forever discharges the City Defendants from any obligations for any claim, known or unknown, arising out of the failure of the City Defendants to provide for a primary payment or appropriate reimbursement pursuant to 42 U.S.C. § 1395y(b)(2)(B)(ii).

E. Dmitri Stoyanoff understands this settlement may impact, limit or preclude his right or ability to receive future Medicare/CMS benefits arising out of the injuries alleged, and nevertheless wishes to proceed with the settlement.

F. The parties have attempted to resolve this matter in compliance with both state and federal law, and have considered Medicare's interests. Dmitri Stoyanoff has concluded that a Medicare Set-Aside ("MSA") is not required or appropriate in this matter. It is not the intention of the parties to shift responsibility for payment of future medical expenses to Medicare pursuant to 42 U.S.C. § 1395y(b) or the Federal Government.

G. Should any person or entity not a party hereto challenge the validity of this Settlement Agreement, or any term thereof, pursue recovery of monies from the City Defendants or bring a claim or claims against the City Defendants arising out of 42 U.S.C. § 1395y(b) related to payment for items or services related to the injuries claimed in this action, Dmitri Stoyanoff shall provide to the City Defendants such cooperation and assistance as the City Defendants may reasonably request in order to resist such a challenge or defend such a claim.

V

THE UNDERSIGNED AGREES AND WARRANTS that all expenses incurred to date or which will be incurred in the future, which are related in any way to claims being released herein, have either been paid or will be paid from the proceeds of this settlement and that Dmitri Stoyanoff will hold the City of Portland, Justin Damerville, Matthew Bigoni, its agents, employees and assigns harmless from any claim for any such expense whenever incurred and, if any suit is filed against the City Defendants to collect such claim, Dmitri Stoyanoff will accept the tender of defense of any such claim, defend it at his expense and pay any judgment entered therein and agree to compensate the City Defendants for any expense or liability incurred as a result of the filing of such suit.

VI

THE UNDERSIGNED HEREBY DECLARES that he has read this Release and Hold Harmless Agreement and that it is fully understood and voluntarily accepted for the purpose of making a full and complete settlement and compromise of any and all claims arising out of the above-described incident, in whatever legal form or theory he might assert, whether disputed or

otherwise, and in particular including, but not limited to, those matters set forth in the complaint of Dmitri Stoyanoff in the United States District Court, District of Oregon, entitled:

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

DMITRI STOYANOFF,

Case No.: 3:20-cv-01874-MO

PLAINTIFF,

v.

CITY OF PORTLAND, a municipal corporation; **JUSTIN DAMERVILLE**, an individual; and **MATTHEW BIGONI** an individual,

DEFENDANTS.

VII

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this Release and Hold Harmless Agreement is intended to, and does, cover not only all known losses and damages, but any further losses and damages not now known or anticipated which may later develop or be discovered including all effects and consequences thereof.

VIII

THE TERMS SET FORTH HEREIN are contractual and not a mere recital.

IX

IT IS FURTHER UNDERSTOOD AND AGREED that this Release and Hold Harmless Agreement releases any and all claims for nondisclosure, fraud or misrepresentation and any and all claims for nondisclosure, fraud or misrepresentation in the inducement of this agreement.

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X

THE UNDERSIGNED FURTHER STIPULATES AND AGREES that the above case may be dismissed with prejudice and without costs or attorney's fees to any party.

DATED this 29th day of October, 2021.

Dmitri Stoyanoff
Dmitri Stoyanoff

WASHINGTON
STATE OF ~~OREGON~~)
CLARK) ss.
County of ~~Multnomah~~)

This instrument was acknowledged before me this 29 day of OCTOBER, 2021, by Dmitri Stoyanoff.



[Signature]
Notary Public – State of ~~Oregon~~ WASHINGTON
Commission No.:
Commission Expiration: FEB 07, 2022

APPROVED:

[Signature]
Franz Bruggemeier, OSB #163533
Juan C. Chavez, OSB #136428
James E. McCandlish, OSB #75246
Of Attorneys for Plaintiff(s)

Karen O'Kasey
Karen O'Kasey, OSB #870696
Of Attorneys for Defendant Justin Damerville